

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GREGORY BUTLER,

Defendant-Appellee.

UNPUBLISHED

May 11, 1999

No. 205374

Recorder's Court

LC No. 97-002253

Before: Gribbs, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

The prosecution appeals as of right from an order dismissing a charge of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). We reverse.

Police officers responded to a report that three black males were selling drugs at an apartment building. When the officers entered the building, they saw defendant and a few other people in the hallway. The officers did not observe any criminal activity. The officers were in plain clothes and, according to plaintiff's brief on appeal, before they could identify themselves as police, defendant fled. The officers chased and detained defendant and conducted a LIEN check. The check showed that there was an outstanding warrant for defendant's arrest. When they searched defendant subsequent to the arrest, officers found an envelope containing drugs.

The issue in this case is narrowly framed by the prosecution. The prosecution concedes that the initial detention of defendant was not justified under *Terry v Ohio*, 392 US 1, 19-20; 88 S Ct 1868; 20 L Ed 2d 889 (1968), but argues that the evidence should not be suppressed because it was obtained following an arrest on a warrant. We agree.

A trial court's decision following a suppression hearing generally will not be reversed unless it is clearly erroneous. However, if the facts are not disputed, the trial court's application of a constitutional standard is not entitled to the same deference as the court's factual findings. This Court reviews questions of law de novo. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997).

Because the prosecution does not dispute the fact that defendant's initial detention was unlawful, the material question before us is whether the exclusionary rule forbids the use of the heroin evidence that was seized from defendant during a search incident to his subsequent arrest. Generally, the exclusionary rule forbids the use of direct or indirect evidence acquired from governmental misconduct. *People v LoCicero (After Remand)*, 453 Mich 496, 508; 556 NW2d 498 (1996). Where, however, the police have unlawfully stopped or detained a person and then discover that the person detained is the proper subject of a lawful arrest on grounds other than the original illegal stop, the police may make the arrest and any evidence obtained as a result is admissible. *People v Lambert*, 174 Mich App 610, 618; 436 NW2d 699 (1989). See also, *People v Kelly*, 231 Mich App 627, 634-637; ___ NW2d ___ (1998).

Here, the stated purpose of the police in detaining defendant was investigative, it was not to search for physical evidence. *LoCicero*, *supra* 510. The police did not search defendant until they had probable cause to arrest him following the routine LIEN check of his identity. Although the initial stop of defendant is acknowledged as improper, the search that led to discovery of the evidence was made subsequent to a lawful arrest. Because the challenged evidence was a product of passive means rather than an active exploitation of the initial stop, we hold that the trial court erred in suppressing the evidence. *LoCicero (After Remand)*, *supra* at 510;

Reversed.

/s/ Roman S. Gribbs
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder